IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 16630 of 2004

Between:
M.Pratap Rao, S/o.Hari Hara Rao,
R/o.Teekanapalli, Hazipur post via,
Donabanda, Mancherial Mandal, Adilabad Dist.

..... PETITIONER

AND

1 The Govt. of A.P., Regr. of Cooperative societies, Gruhakalpa, Nampalli, Hyderabad.
2 Dist. Cooperative officer, Adilabad.
3 Deputy Registrar of Cooperative societies, Mancherial, Adilabad Dist.
4 Cooperative Sub-Registrar/Sub-Divisional Cooperative officer, Luxittipet, Adilabad Dist.
5 Primary Agricultural Cooperative Society Ltd., Rapally, Adilabad Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of writ Mandamus or any other appropriate writ (i) declaring the surcharge proceedings initiated under section 60(1) of the A.P. Cooperative societies Act, 1964 in pursuance to Rc.No.2484/2003-D dated 30-8-2004 as illegal and arbitrary, ii) declaring the enquiry report under section 51 of the Act in so far the petitioner is concerned as illegal and arbitrary, and consequently restrain the respondents from recovery any amounts from the petitioner.

Counsel for the Petitioner : MR.G.VIDYASAGAR

Counsel for the Respondents : GP FOR COOPERATION

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO. 16630 of 2004

ORAL ORDER :

This writ petition is filed seeking a Writ of Mandamus declaring the surcharge proceedings, dated 30-08-2004 initiated under Section 60 (1) of The A.P. Co-operative Societies Act, 1964 (for short, 'the Act') as arbitrary and illegal.

The petitioner states that he is the founder president of 5th respondent – Primary Agricultural Co-operative Society Limited, Rapally, Adialabad district. He was elected on 31-07-1995 as President of the society and continued in the office upto 29-07-2000. Thereafter, he was continued as Official Person-in-Charge Chairman upto December, 2003. Now, this writ petition is filed being aggrieved by notice dated 30-08-2004 issued by the 3rd respondent – Deputy Registrar of Co-operative Societies, Mancherial, Adilabad district under Section 60(1) of the Act calling upon the petitioner to show-cause as to why he should not be made responsible to restore the amounts as specified thereunder together with interest.

The learned Counsel for the petitioner contends that even as per the report of enquiry under Section 51 of the Act, there is absolutely no material to hold that the petitioner is responsible for the alleged misappropriation of funds and therefore the impugned proceedings initiated under Section 60 of the A.P. Co-operative Societies Act, 1964

are ex facie illegal and unjust. It is also pointed out by the learned Counsel for the petitioner that in view of the specific finding in the report that the Secretary has misappropriated the funds of the Society, at the most the proceedings ought to have been initiated against the Secretary alone and since none of the ingredients of Section 60(1) of the Act are present, the impugned proceedings against the petitioner are misconceived and cannot be maintained.

As can be seen, the impugned order is only a show-cause notice issued in terms of the provisions under Section 60(1) of the Act calling upon the petitioner to make his representation in writing in his defence. Thus, he is afforded ample opportunity to rebut the allegations if any as well as to urge that the proceedings are not maintainable. As on today, it cannot be said that there is any adverse order against him and therefore the writ petition is premature and cannot be maintained.

Accordingly, without expressing any opinion on merits, the Writ Petition is disposed of granting leave and liberty to the petitioner to file appropriate explanation raising all the grounds as available under law before the third respondent within two weeks from today. No costs.

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23rd September, 2004.

Note:-CC in one week.

(B/O)

gbs

To

1 The Registrar of Co-operative Societies, Govt. of A.P., Gruhakalpa,

Nampalli, Hyderabad.
2 Dist. Cooperative officer, Adilabad.
3 Deputy Registrar of Cooperative societies, Mancherial, Adilabad Dist.
4 Cooperative Sub-Registrar/Sub-Divisional Cooperative officer, Luxittipet, Adilabad Dist.
5 Primary Agricultural Cooperative Society Ltd., Rapally, Adilabad Dist.
6.2CCs to G.P. for Co-operation, High Court of AP Blds, Hyderabad (OUT).
7.2CD copies